IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9994 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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V N SHAH PRINCIPAL SENIOR CIVIL JUDGE - Petitioner(s)
Versus
HIGH COURT OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MR JB PARDIWALA for Respondent(s) : 1-2,
MR AJ DESAI, AGP for Respondent(s) : 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 08/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Rule. Learned Counsel Shri J.B.Pardiwala waived service of Rule on behalf of respondents No.1 & 2 and learned AGP Shri A.J.Desai waived service of Rule on behalf of Respondent No.3.

Heard learned Counsel Ms. Utpala Vora for the petitioner and Shri J.B.Pardiwala, learned Counsel for the respondents No.1 & 2 and Shri A.J.Desai, learned AGP for the respondent No.3 – State.

The petitioner was a Judicial Officer. He was facing inquiries. During the inquiry he was under suspension. While under suspension he applied for voluntary retirement. The respondent – High Court acceded to his request of voluntary retirement and revoked the order of suspension and reinstate him in service. Thereafter, he proceeded on leave and applied for voluntary retirement on 7.4.2005, with effect from 7.7.2005, the day on which he was completing 25 years of pensionable service. As usual, the Government took undue long time in passing the Order. The order of voluntary retirement was passed on 29.4.2006 (Annexure : I) whereby the Application of the petitioner to voluntary retire him with effect from 7.7.2005 was accepted with retrospective effect.

By way of this petition the petitioner has challenged the impugned order dated 29.4.2006 (Annexure:I) passed by the Respondent No.3 – State of Gujarat accepting his Application for voluntary retirement with retrospective effect. It is prayed in Para : 6(B) of the petition, as under:

“Be pleased to direct the respondents

authorities to pay to the petitioner (i) difference of subsistence allowance as directed by the Hon'ble Court in Special Civil Application No.5726 of 2005 (ii) pass appropriate orders regularizing the period of suspension (iii) finalizing the pending bills and make the payment thereof (iv) sort out the issue relating to the housing loans and the interest calculated thereon (v) finalizing the case of the petitioner for the Accelerated Career Progression Scale giving him to ACPS in the senior cadre as had completed 10 years & (vi) finalizing the pension papers of the petitioner forthwith."

The main challenge in this petition is regarding the impugned order (Annexure:I) passed by the respondent No.3 – State of Gujarat whereby the application for voluntary retirement of the petitioner was accepted with retrospective effect i.e. with effect from 7.7.2005. It was contended in the petition that no retrospective effect can be given in case of voluntary retirement. It can only be from the date of passing the order. At first look the submission seems to be attractive, but on closure scrutiny of record it is found without any substance because the petitioner himself has stated in his Application dated 7.4.2005 that on his completing 25 years of pensionable service on 7.7.2005 he may be treated as retired with effect from 7.7.2005. It is a different matter that the respondent State Government

took little bit undue long time in accepting the said request, but on such ground the impugned order cannot be interfered. Hence, the first challenge is rejected.

This brings us to the miscellaneous prayer in Para : 6(B) in this petition. In normal circumstances when so many prayers are made in one petition, normally the Court does not entertain. However, having regard to the facts and circumstances of the case, we are of the considered opinion that if the petitioner makes proper representation to the respondent Authority within one month from today regarding his prayer made in para : 6(D) then we are sure that his representation will be considered by the respondent Authority strictly in accordance with law, as early as possible, preferably within three months thereof.

With this observation and direction the petition is disposed of. Rule discharged subject to the above direction. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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